IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5920 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DISTRICT DEVELOPMENT OFFICER & 1 - Petitioner(s)

Versus

KHIMJIBHAI GOVINDBHAI SURENDRANAGAR DIST.NMR - Respondent(s)

==========

Appearance :

MR HS MUNSHAW for Petitioner(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/09/2005

ORAL JUDGMENT

Though served initially with notice of this Court and thereafter also of the notice of rule, no one has appeared for the respondent. I have heard the learned advocate for the petitioners.

2. The petitioners have challenged the legality of the award dated 24th November 2004 passed by the Labour Court, Surendranagar. By the impugned award, the Labour Court was pleased to partially allow the reference of the respondent-workman and his termination dated 1.5.90 was declared as illegal and he was ordered to be reinstated in service with continuity and 20 per cent backwages. In the impugned award, the Labour Court observed that the case of the petitioners is that the respondent was engaged purely on adhoc basis and he had not worked for more than 240 days in any of the years. The Labour Court, however, observed that the employer had produced muster roll for the period between 1.7.89 to 31.3.90 from which it can be seen that the workman had worked for 181 days during the said period. The workman was reported to have been terminated on 1.5.90. The muster rolls prior to 1.7.89 have not been produced and no reasons were indicated why such muster rolls were not produced. The Labour Court, therefore observed that the employer should have produced the material to establish that the workman has not worked for more than 240 days during the relevant period.

3. It can be noted at the outset that the petitioners had filed written statement in which it was specifically contended that the workman was employed only for 40 days in the year 1984, 96 days in the year 1986, 26 days in the year 1987, 130 days in the year 1989 and 76 days in the year 1990. Thus the workman had not completed more than 240 days in any of the years or during the 12 calendar months preceding the date of termination according to the employer. In that view of the matter, it was the duty of the workman to lead proper evidence to establish that he had worked for more than 240 days in a year. Reference can be made to the decision of the Hon'ble Supreme Court in the case Range Forest Officer v. S.T.Hadimani, reported in AIR 2002 SC 1147.

4. In the present case, the Labour Court erred in shifting the burden on the employer. No adverse inference could have been drawn especially when it was not a case where the workman had called upon the employer to produce certain documents which the employer without proper justification failed to do. The award of the Labour Court, therefore, cannot be sustained.

5. In the result, the impugned award of the Labour

Court is set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)